

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JML, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHAWN MICHAEL LOWE, SR.,

Respondent-Appellant.

UNPUBLISHED

May 29, 2003

No. 245551

Branch Circuit Court

Family Division

LC No. 02-002283-NA

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JENNIFER LINNE LOWE,

Respondent-Appellant.

No. 245687

Branch Circuit Court

Family Division

LC No. 02-002283-NA

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

In these consolidated cases the respondents Shawn and Jennifer Lowe appeal as of right the trial court's order terminating their parental rights to their child JML pursuant to MCL 712A.19b(3)(b)(i), (j), and (k). We affirm in each case. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

On May 8, 2002, petitioner Family Independence Agency (FIA) filed a petition seeking custody of JML and her brother on the ground that Jennifer Lowe had physically abused JML. After a hearing, the trial court placed JML in foster care with her great-grandmother. The court allowed the brother to remain in the Lowes' care, but required that he be made available to the FIA so that the FIA could ensure his well being.

On May 20, 2002 the FIA filed an amended petition alleging that the Lowes had inflicted further injuries upon JML and had also physically abused her brother. The petition sought

temporary custody of the brother. The FIA moved to allow JML to testify outside the presence of the Lowes at a hearing on the amended petition, and the trial court granted the motion. The trial court held a bench trial on the amended petition on June 27, 2002. JML testified that Jennifer Lowe pulled her ears with pliers, that Shawn Lowe, Sr. knocked her to the ground, and that the Lowes bathed her in cold water when she dirtied her pants, locked her in the basement at times, and washed out her mouth with soap. In an order entered on June 27, 2002, the trial court made JML and her brother temporary wards of the court, and scheduled a dispositional hearing for July 23, 2002. Subsequently, the dispositional hearing was adjourned on several occasions.

On July 19, 2002, the FIA filed a supplemental petition seeking temporary custody of a second brother on the ground that he would be at substantial risk of harm if he remained in the Lowes' custody. That same day, the trial court placed the second brother in foster care. The pretrial hearing in the second brother's case was scheduled for August 20, 2002. On that date the trial court held a hearing on various matters. The trial court denied Jennifer Lowe's motion to disqualify the prosecutor, and ordered the Lowes to have no contact with the foster parents.

On September 30, 2002, the FIA filed a motion styled as a motion for rehearing and termination of the Lowes' parental rights as to JML only pursuant to MCL 712A.19b(3)(b)(i), (j), and (k). The petition contained the same allegations made in the previous petitions. The trial court scheduled a hearing on the petition for November 12, 2002. The notice indicated that the hearing was to be a permanent custody hearing. At the permanent custody hearing, counsel for the Lowes argued that a termination hearing was premature because a dispositional hearing had not yet taken place. Counsel sought summary disposition or, at a minimum, an adjournment of the permanent custody hearing until a dispositional hearing could be held. The trial court denied the request, reasoning that because termination could be sought at a dispositional hearing, the hearing could be deemed a dispositional hearing. The trial court observed that it was undisputed that the Lowes had notice that the FIA intended to seek termination of their parental rights.

At the hearing, the Lowes denied that they physically abused JML. The foster care worker testified that because the Lowes adamantly denied that they abused JML and refused to take responsibility for the events that resulted in her being removed from their custody, the FIA could not offer specific services. The worker indicated that the parties could not agree that specific services should be pursued. The trial court found that clear and convincing evidence existed to terminate the Lowes' parental rights to JML. The trial court specifically found JML's testimony to be credible. The trial court noted that, while the Lowes unequivocally denied that they abused JML in any way, medical evidence supported a finding that JML's injuries resulted from abuse. The trial court found that termination of the Lowes' parental rights was in JML's best interests. The Lowes appeal of right.

II. Standard Of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence.¹ This Court reviews the trial court's findings of fact for clear error.² A finding is clearly erroneous when the

¹ *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

² MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

reviewing court is left with the firm and definite conviction that a mistake was made.³ Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order the termination of parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests.⁴ The trial court's decision regarding the child's best interests is reviewed for clear error.⁵

III. The Trial Court's Decision

Pursuant to MCR 5.974(D), a trial court may order termination of parental rights at the initial dispositional hearing if: (1) the original or an amended petition contains a request for termination; (2) the trier of fact found by a preponderance of the evidence that the child came within the jurisdiction of the court pursuant to MCL 712A.2(b) at trial; and (3) the court finds on the basis of clear and convincing legally admissible evidence introduced at trial that one or more facts alleged in the petition are true, justify terminating parental rights at the initial dispositional hearing, and fall under MCL 712A.19b(3).

Here, the trial court did not hold a dispositional hearing prior to the permanent custody hearing. We conclude that the trial court did not err in considering the permanent custody hearing to be a dispositional hearing as well. The Lowes had adequate notice that the FIA was seeking termination of their parental rights to this particular child,⁶ and had sufficient opportunity to present any evidence they wished at the permanent custody hearing. The permanent custody hearing comported with the requirements of MCR 5.974(D). The Lowes were not denied due process.⁷

We also conclude that the trial court did not clearly err in finding that the FIA established by clear and convincing evidence that termination of the Lowes' parental rights was warranted on the grounds that they physically abused the child, and that it was reasonably likely that the child would be harmed if returned to their custody.⁸ The evidence did not show that termination of the Lowes' parental rights was clearly not in the child's best interests.⁹

Affirmed.

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Pat M. Donofrio

³ *Jackson, supra* at 25.

⁴ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

⁵ *Trejo, supra* at 356-357.

⁶ The FIA also sought termination of the Lowes' parental rights to their other children; however, the order at issue in these appeals concerned only JML.

⁷ See *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992).

⁸ MCL 712A.19b(3)(b)(i), (j), and (k)(iii).

⁹ MCL 712A.19b(5); *Trejo, supra* at 353-354.